IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APEAL NO.1022 OF 1994

1. Smt.Mania Pradhan
2. Shri Uchabha Pradhan
3. Master Satrugan Pradhan
4. Smt.Kabuli Pradhan
5. Miss Bhima Pradhan

all residing at Post Ayitipur
Khali Kotte R.S., Dist.:Ganjam
Orissa ... Appellants

V/s.

1. Shri Anant Bihari Nagi
14/10, Shastri Nagar
Santacruz (W), Bombay-52
(Dissmissed vide order dt.17.6.04)

2. M/s.Paresh Electrical Stores
49, Kakkad Arcade, 11, New Marine
Lines, Opp.Liberty Cinema
Bombay-20
(Electrical Contractor)

3. The Chief Executive Officer
M.I.D.C. having office at
Oriental House, Mangalore Street
Bombay-38 ... Respondents

Mr.Bipinchandra C. Shah for Appellants
Mr.N. Vyas for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 29, 2004**

ORAL JUDGMENT:

. The First Appeal arises from the judgment and order of the Commissioner for Workmen's Compensation, Thane disallowing the application filed by the appellants.

2. The first two appellants are the parents of the deceased Ananta Pradhan. Appellant Nos.3 to 5 are the siblings of the deceased. It is the claim of the appellants that the deceased Ananta Pradhan was employed by M/s.Paresh Electrical Stores, Respondent No.2 herein, at the time of his death. It appears that Respondent Nos.2 and 3 entered into an agreement under which Respondent No.2 undertook to complete work of installation of street lights in the Shil-Mahape and Pfizer Road area. This area was behind a factory known as Krishna Steel in the industrial area mentioned in the agreement between Respondent Nos.2 and 3. The present appeal has been dismissed against Respondent No.1 who was the sub-contractor according to M/s.Paresh Electrical Stores, Respondent No.2 herein. It appears that the deceased while working on installation of street lighting fell off a pole erected by the Maharashtra State Electricity Board (MSEB) in the MIDC area and died.

3. The appellants claimed that the pole was situated in the area of MIDC where M/s.Paresh Electrical Stores had undertaken to erect poles for street light in terms of an agreement. It appears that the incident occurred on 3.4.1989 by which time the work of installation of street lighting was completed. The

entire work was completed by 25.3.1989 and only measurements were to be taken in July 1989.

4. It appears that despite being employed with Respondent No.2, no compensation was paid to the deceased workman's family since according to Respondent No.2, the accident occurred when the work was completed and, therefore, it had not occurred during and out of course of employment. The appellants, therefore, after issuing a notice to the respondents filed a claim before the Commissioner for Workmen's Compensation claiming an amount of Rs.88,548/- as compensation.

5. The written statements were filed before the Commissioner for Workmens' Compensation. All the parties denied any relationship of employer-employee with the deceased. All the respondents admitted that the accident occurred on 3.4.1989 but did not agree that they were responsible in any manner or that there was any employer-employee relationship between the deceased and them.

6. Appellant No.1, the mother of the deceased examined herself and the other appellants as well. Respondent No.1 examined himself and in his cross-examination admitted that he was not the employer of the deceased. He denied that he was working as a

labour contractor for Respondent No.2. He denied that there was any contract entered into by him with M/s.Paresh Electrical Stores for erection of electrical poles and installation of street lights. However, he admitted in his cross-examination that the report of the accident to the Police station was made by him on behalf of Respondent No.2 i.e., Paresh Electrical Stores.

The partner of Paresh Electrical Stores was examined. This witness stated that there were two contracts entered into by Paresh Electrical Stores with Respondent No.3 for installation of street lights between the years 1988 and 1989. The area of operation of one contract was between Mahape and Pfizer Road and another was in TTC Industrial Area Shed Complex, behind M/s.Krishna Steels. This witness has stated that the accident occurred at Turbhe Bazar area.

The witness of Respondent No.3 of MIDC was also examined. He was an Assistant Engineer of the MIDC. He has deposed that the deceased was working in the area which fell under his supervision under the contract for service. This witness admitted that the deceased met with an accident within his area in which the installation of street lights was given to M/s.Paresh Electrical Stores, Respondent No.2 herein. The witness has further stated that he had not personally seen the

pole from which the deceased fell down but claimed the pole belonged to the Maharashtra State Electricity Board (MSEB). He has denied the suggestion made on behalf of the appellants that there was a dead pole of MSEB in the area which was hindering the street lighting and that, therefore, they asked M/s.Paresh Electrical Stores to have the pole removed. This witness has also stated that the accident took place in near the area covering Pfizer Road, MIDC. He has also stated that Turbhe Bazar was not known as Shed Complex where the respondent No.2 had undertaken the work of installation of street lights.

6. The Commissioner for Workmen's Compensation having recorded evidence before him and on the basis of the material evidence has come to the conclusion that the workman had died in an accident which did not arise out of and in the course of employment. The Commissioner accepted the fact that the deceased was a workman. However, there was dispute as to who was the actual employer of the deceased. In such circumstances, the Commissioner held that the applicants i.e., the appellants herein, were not entitled to any compensation. The Commissioner ought to have framed an issue as to who was the real employer of the workman. From the evidence on record, it is apparent that M/s.Paresh Electrical Stores was the employer of the

deceased. Respondent No.1 through M/s.Paresh Electrical Stores claimed that he was an employee of the sub-contractor/supervisor to whom Paresh Electrical Stores had given the contract for digging of trenches. Respondent No.1 has denied this fact and has stated in his evidence that there was no employer-employee relationship between the deceased and himself since he i.e., Respondent No.1 was employed by Respondent No.2 and that at the instance of Respondent No.2 he had reported the accident to the police. Furthermore, it is unbelievable that the MIDC and Paresh Electrical Stores used to engage any sub-contractor. It is obvious that the deceased was employed by Paresh Electrical Stores.

7. The question as to whether the accident arose out of and in the course of employment will now have to be assessed on the facts established and the evidence of an independent witness that the pole from which the deceased fell off while working belonged to the MSEB. It is claimed by the appellants that the respondents had directed the deceased to climb the electrical pole and, therefore, he had undertaken this work in the course of his duty with Respondent No.2. However, there is ample evidence on record to indicate that there was no causal connection between the accident and the employment. Unless this causal connection is established, the Commissioner cannot grant compensation. The evidence on

record indicates that there was no nexus between the work for which the deceased was employed and the accident. The deceased was employed as a trench digger and, therefore, there was no need for him to climb up the pole. There is no evidence on record to establish the fact that the employer had directed the deceased to climb the pole in order to cut some electrical wire. Therefore, the respondent cannot be saddled with the payment of compensation for an accident which did not arise in the course of employment. There is no doubt that the accident occurred during the course of employment. But under section 3 of the Workmen's Compensation Act both ingredients have to be established in order to fasten the liability on the employer to pay compensation. The accident should not only arise in the course of employment but also out of employment. As held in the judgment in **M.Mackenzie v/s. I.M. Issak, AIR 1970 SC 1906** as under:

> 5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it". The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words, there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere

> nature of the employment. The expression applies to employment as such - to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises 'out of employment'. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act....

8. There is no doubt that the Apex Court has held that it is impossible to lay down any rule as to the degree of proof which is sufficient to justify any inference being drawn, but the evidence must be such as would induce a reasonable person to draw it. In the present case, the evidence on record does not lead one to the inference that the deceased was directed to climb the electrical pole and that he had met with the accident arising out of and in the course of employment. In the case of **Smt.Nanjamma & Ors. v/s. The City Municipal Council, 1982 LAB. I.C. 1208,** the Karnataka High Court has taken a similar view relying on the judgment in **M.Mackenzie v/s. I.M. Issak** (supra).

9. In my view, the Commissioner has not erred by coming to the conclusion that the respondents are not liable to pay compensation as the accident did not arise out of and in the course of employment. Appeal dismissed.